HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.18376 OF 2007

Between:

Sumanam Amrutha Valli and another

…Petitioner

AND

The Authorised Officer, State Bank of India,
at Vijayawada and another

...Respondents

: O R D E R :

Counsel for the petitioners : Shri Y. Subrahmanyam

Counsel for respondent No.1 : Shri A. Vishnu Vardhan Reddy

August 31, 2007

Per G.S.SINGHVI, CJ

This petition is directed against order dated 4-7-2007 passed by Debts Recovery Tribunal, Visakhapatnam (for short, 'the Tribunal') in I.A No. 136 of 2005 in S.A No. 44 of 2005, whereby the Tribunal vacated ex parte stay order passed in favour of the petitioners.

Petitioner No. 1 had taken loan from State Bank of India, Satyanarayanapuram Banch, Vijayawada (for short, 'the bank') and mortgaged landed property and building as security for repayment of loan. On account of failure of the borrower to repay the loan, the bank issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'). This was followed by notice dated 31-3-2004 issued under Section 13 (4) of the Act and sale notice dated 4-2-2005.

Faced with the imminent threat of the sale of their landed property and building, the petitioners filed an application under Section 17 of the Act, which stands registered as S.A No. 44 of 2005. They also filed I.A No. 136 of 2005 for stay of the impending sale. Initially, the Tribunal passed an ex parte interim order, but after taking note of the averments contained in the counter affidavit filed on behalf of the bank and hearing the parties, the learned Presiding Officer passed the order under challenge, whereby he vacated the ad interim order on the premise that the petitioners have failed to repay the loan and interest amounting to Rs.40,00,000/-.

The petitioners have questioned the impugned order on several grounds including the one that before vacating the ad- interim order,

the Tribunal did not give them opportunity of hearing.

Shri Y. Subrahmanyam, learned counsel for the petitioners made serious efforts to convince us that notwithstanding the availability of statutory remedy of appeal under Section 18 of the Act, this Court should entertain the writ petition and restrain respondent No.2 from effecting recovery of its dues by contending that the order under challenge is vitiated due to violation of rules of natural justice, but we have not felt persuaded to accept his submission.

Although in paragraph 4 of the affidavit filed him, petitioner No.2 Shri Sumanam Satyanarayana Murthy, has averred that the Tribunal passed order vacating the stay without hearing them and providing opportunity to place their arguments he has failed to substantiate the same. In reply to the Court's query, learned counsel for the petitioners fairly admitted that neither of his clients was present at the time of hearing of their application by the Tribunal. The affidavit of the advocate, who appeared on behalf of the petitioners before the Tribunal, has also not been filed. If there was any grain of truth in what has been averred in para 4 of the affidavit of petitioner No.2, then the affidavit of the advocate, who was engaged by them to represent their cause before the Tribunal should have been filed. However, the fact of the matter is that no such affidavit has been filed. Therefore, the impugned order cannot be invalidated on the ground of violation of the rules of natural justice and the petitioners cannot be allowed to by-pass the settled rule that in exercise of the power vested under Article 226 of the Constitution of India, the High Court will not entertain a writ petition if an efficacious alternative remedy is available to the petitioner. In this connection, reference can usefully be made to the judgments of the Supreme Court in **A.V. Venkateshwaran v. R.S.**

Wadhwani[1], **Thansingh Nathmal v. Superintendent of Taxes**[2], **Baburam v. Zilla Parishad**[3], **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[4], **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath Ghosh**[7], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[14] and order dated 31.7.2007 passed by this Court in Writ Petition No.15653 of 2005 – M/s.Chebrolu Distributors, Vijayawada v. The Deputy Commercial Officer – II, Vijayawada I Division, Vijayawada, Krishna District.

In **Harbanslal Sahnia v. Indian Oil Corporation Ltd.** (supra), the Supreme Court reiterated the rule of alternative remedy and then held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1**}. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court

itself instead of driving them to the need of initiating arbitration proceedings."

Since the petitioners have failed to show that their case falls in either of the exceptions, we do not find any justification to entertain the writ petition by ignoring the factum of availability of effective alternative remedy of appeal.

In the result, the writ petition is dismissed leaving the petitioner free to avail statutory remedy of appeal under Section 18 of the Act.

As a sequel to dismissal of the writ petition, WPMP No. 23590 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

August 31, 2007

ks

---

[1] AIR 1961 SC 1506

[2] AIR 1964 SC 1419

[3] AIR 1969 SC 556

[4] (1983) 2 SCC 433

[5] AIR 1970 SC 645

[6] AIR 1970 SC 1980

[7] (1972) 4 SCC 379

[8] (1975) 4 SCC 378

[9] AIR 1988 SC 66

[10] (1999) 4 SCC 43

[11] (2001) 6 SCC 634

[12] (2002) 1 SCC 216

[13] (2003) 2 SCC 107

[14] (2004) 3 SCC 553